

# Guide to Judiciary Policy

Vol 7: Defender Services

Pt A: Guidelines for Administering the CJA and Related Statutes

## Appx 2B: Model Plan for the Composition, Administration and Management of the CJA Panel

**Defender Services Committee Comment:** This “Model Plan” is intended to provide guidance in the establishment and operation of the Panel of private attorneys required under subsection (b) of the Criminal Justice Act, [18 U.S.C. § 3006A](#). The “Model Plan” may either be incorporated into the existing District Plan for the Implementation of the Criminal Justice Act or promulgated as a supplement to that Plan by local rule. If the “Model Plan” is issued as a local rule, care should be taken to insure that no provision of the “Model Plan” is inconsistent with the District Plan for the Implementation of the Criminal Justice Act.

### I. Composition Of Panel Of Private Attorneys

#### A. CJA Panel

1. *Approval.* The court will establish a panel of private attorneys (hereinafter referred to as the “CJA Panel”) who are eligible and willing to be appointed to provide representation under the Criminal Justice Act. The court will approve attorneys for membership on the panel after receiving recommendations from the “Panel Selection Committee,” established under paragraph B of this Plan. Members of the CJA Panel will serve at the pleasure of the court.
2. *Size.* The court will fix, periodically, the size of the CJA Panel. The panel shall be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload, yet small enough so that panel members will receive an adequate number of appointments to maintain their proficiency in federal criminal defense work, and thereby provide a high quality of representation.

**Defender Services Committee Comment:** This provision reflects the policy statement on the size of CJA Panels contained in [§ 210.30.10 of the Guidelines for Administering the CJA and Related Statutes \(CJA Guidelines\)](#) adopted by the United States Judicial Conference.

3. *Eligibility.* Attorneys who serve on the CJA Panel must be members in good standing of the federal bar of this district, and have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the United States Sentencing Guidelines.

Subsection (b) of the Act provides, in part, that:

Counsel furnishing representation under the plan shall be selected from a panel of attorneys designated or approved by the court, or from a bar association, legal aid agency, or defender organization furnishing representation pursuant to the plan.

However, when the district judge presiding over the case, or the chief judge if a district judge has not yet been assigned to the case, determines that the appointment of an attorney, who is not a member of the CJA Panel, is in the interest of justice, judicial economy or continuity of representation, or there is some other compelling circumstance warranting his or her appointment, the attorney may be admitted to the CJA Panel *pro hac vice* and appointed to represent the CJA defendant. Consideration for preserving the integrity of the panel selection process suggests that such appointments should be made only in exceptional circumstances. Further, the attorney, who may or may not maintain an office in the district, should possess such qualities as would qualify the attorney for admission to the district's CJA Panel in the ordinary course of panel selection.

**Defender Services Committee Comment:** The Defender Services Committee considered the question of whether detailed eligibility standards and minimum experience standards should be included. The Committee was of the view that while imposing specific qualification and experience requirements might ensure that only the most qualified attorneys become members of the panel in some districts, in other districts such specific requirements might render it difficult or impossible to find a sufficient number of attorneys to serve on the panel.

The "Model Plan" thus contains only the very general eligibility requirement of membership in good standing of the federal bar of the district and demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the United States Sentencing Guidelines. More detailed and specific qualifications standards can, if desired, be developed and substituted locally by each district.

4. *Equal Opportunity.* All qualified attorneys are be encouraged to participate in the furnishing of representation in CJA cases, without regard to race, color, religion, sex, age, national origin or disabling condition.
5. *Terms.* The initial CJA Panel established under this Plan will be divided into three groups, equal in number. Members will be assigned to one of the three groups on a random basis. Members of the first group will serve on the panel for a term of one year, members of the second group will serve on the panel for a term of two years, and members of the third group will serve on the panel for a term of three years. Thereafter, attorneys admitted to membership on the CJA Panel will each serve for a term of three years.

**Defender Services Committee Comment:** In view of the provision in paragraph 1 above, and that of [§ 210.30 of the Guidelines for Administering the CJA and Related Statutes \(CJA Guidelines\)](#) that members of the CJA Panel will serve at the pleasure of the court, some courts may not wish to have fixed terms for panel membership but rather have members of the panel serve continuously until they resign or are removed. If the above paragraph on terms of membership is deleted, the following paragraph on reappointment should also be deleted.

6. *Reappointment.* A member of the CJA Panel will not be eligible for reappointment to the panel for the one year period immediately following expiration of the member's term, unless waiver of this restriction is certified by the court.

**Defender Services Committee Comment:** As with the preceding paragraph, if a court should elect to have indeterminate membership on the panel rather than fixed terms, this paragraph should be deleted.

7. *Application.* Application forms for membership on the CJA Panel will be made available, upon request, by the clerk of the court. Completed applications will be submitted to the clerk of the court who will transmit the applications to the chairperson of the Panel Selection Committee.

#### B. Panel Selection Committee

1. *Membership.* A Panel Selection Committee will be established by the court. The Committee will consist of one district judge, one United States magistrate judge, one attorney who is entering the third year of his or her term as a member of the CJA Panel [, and the federal

public or community defender]. The Committee will be chaired by the district judge.

**Defender Services Committee Comment:** The “Model Plan” provides for the screening and reviewing of the qualifications of applicants by a Panel Selection Committee consisting of one district judge, one United States magistrate judge, one attorney who is a senior member of the CJA Panel and, if there is a federal defender organization in the district, the federal defender. The primary function of the Committee would be to consider applications, evaluate the qualifications of the applicants, and to make recommendations to the court on appointments to the CJA Panel. The “Model Plan” calls for the Committee to meet at least annually, and leaves to the Committee the development of its own procedures, subject to any guidelines that may be established by the court.

The composition of the Panel Selection Committee can be adjusted to reflect the degree of judicial, federal defender, or panel attorney involvement in the screening process that is desired by each district court. The court should make a diligent effort to ensure that the composition of the Panel Selection Committee also reflects the diversity of the community in regard to the categories listed in Paragraph I.A.4. above, in order to achieve the goals of that paragraph.

## 2. *Duties.*

- a. The Panel Selection Committee will meet at least once a year to consider applications for the vacancies created by the terms expiring each year. The Committee will review the qualifications of applicants and recommend, for approval by the court, those applicants best qualified to fill the vacancies.

At its annual meeting, the Committee will also review the operation and administration of the panel over the preceding year, and recommend to the court any changes deemed necessary or appropriate by the Committee on the appointment process and panel management. The Committee will also inquire annually as to the continued availability and willingness of each panel member to accept appointments.

- b. If, at any time during the course of a year, the number of vacancies due to resignation, removal, or death significantly decreases the size of the panel, the Committee will solicit applications for the vacancies, convene a special meeting to review the qualifications of the applicants, and select prospective members for recommendation to the court for

approval. Members approved by the court to fill mid-term vacancies will serve until the expiration of the term that was vacated, and will be immediately eligible for reappointment notwithstanding the one-year restriction imposed by paragraph A(5) above, **provided** that the portion of the expired term actually served by the member did not exceed eighteen months.

- c. When the Committee submits the names of applicants for panel membership to the court for approval, the Committee will furnish information to the court on recruitment efforts undertaken by the Committee in furtherance of the Equal Opportunity statement in Paragraph I.A.4. of this Model Plan. At least once each year the Committee will provide the court with information on the panel of attorneys in each of the categories listed in paragraph I.A.4 of this Model Plan.

**Defender Services Committee Comment:** Recruitment efforts to provide opportunities for women, minorities, and otherwise qualified persons with disabilities could include the following:

- Notifying bar associations composed of minorities, persons with disabilities, and women of the availability of panel membership;
- Advertising in legal journals targeted to persons with disabilities, minorities, and women to encourage panel membership;
- Informal person-to-person recruiting of persons with disabilities, minorities and women by panel administrators, and women and minority members of the panel, and members who have disabilities;
- Contacting current or former members of the panel, or other prominent local attorneys, who have disabilities or are minorities or women to seek recommendations of other persons with disabilities, minority and women practitioners.

#### C. CJA Training Panel

The Panel Selection Committee may establish a “CJA Training Panel,” consisting of attorneys who do not have the experience required for membership on the CJA Panel. Training Panel members may be assigned, by the court, to assist members of the CJA Panel in a “second chair” capacity. Training Panel members are not eligible to receive appointments

independently, and will not be eligible to receive compensation for their services in assisting CJA Panel members. Prior service on the CJA Training Panel is not a requirement for membership on the CJA Panel, nor will service on the Training Panel guarantee admission of an attorney to the CJA Panel.

**Defender Services Committee Comment:** The “Model Plan” does **not** provide for a two-tier panel, i.e., one in which the more experienced members would be assigned to a felony panel and less experienced members to a misdemeanor panel. There are several reasons for rejecting this concept:

- (a) Many districts have a very small number of misdemeanor or petty offense cases, therefore there would be no need for a separate panel.
- (b) Experience alone, whether in terms of years in practice, or number of trials, is not a reliable enough factor to serve as a standard or criteria in determining qualifications to handle serious cases.
- (c) Certain misdemeanor and petty offense cases may be quite complex, and entail serious consequences if a conviction is obtained. Thus, requirements for highly qualified counsel in these cases would not differ from the requirements for attorneys in felony cases.
- (d) Avoiding a two-tier panel system precludes the possibility that attorneys might be viewed as more or less competent.

The “Model Plan” also provides that the Panel Selection Committee **may** establish a “CJA Training Panel” consisting of attorneys who have not acquired the experience deemed necessary for membership on the CJA Panel. These attorneys could be assigned by the court to assist members of the CJA Panel in a voluntary, “second chair,” capacity. Training Panel members would **not** be eligible for independent appointments, nor for compensation. Training Panel membership would be neither a condition precedent to CJA Panel membership nor would service on the Training Panel guarantee admission to the CJA Panel. Training Panel members would be approved by the Panel Selection Committee, rather than by the court.

## II. Selection For Appointment

### A. Maintenance Of List And Distribution Of Appointments

The clerk of the court [federal public or community defender] will maintain a current list of all attorneys included on the CJA Panel, with current office addresses, email address, and telephone numbers, as well as a statement of qualifications and experience. The clerk [federal public or community

defender] will furnish a copy of this list to each judge and United States magistrate judge. The clerk [federal public or community defender] will also maintain a public record of assignments to private counsel, and, when appropriate, statistical data reflecting the proration of appointments between attorneys from the federal public or community defender office and private attorneys, according to the formula described in the CJA Plan for the district.

**Defender Services Committee Comment:** The Committee takes no specific position as to whether or not, and to what degree, federal public or community defender organizations should be involved in the management and administration of the CJA Panel. In those districts in which the court wishes the federal public or community defender organization to undertake the responsibility for the maintenance of appropriate records on the CJA Panel and the distribution of cases, the federal public or community defender organization, as shown in brackets, can be substituted for the clerk of the court.

B. Method Of Selection

Appointments from the list of private attorneys should be made on a rotational basis, subject to the court's discretion to make exceptions due to the nature and complexity of the case, an attorney's experience, and geographical considerations. This procedure should result in a balanced distribution of appointments and compensation among the members of the CJA Panel, and quality representation of each CJA defendant.

Upon the determination of a need for the appointment of counsel, the judge or United States magistrate judge will notify the clerk of court [federal public or community defender] of the need for counsel and the nature of the case.

The clerk of court [federal public or community defender] will advise the judge or United States magistrate judge as to the status of distribution of cases, where appropriate, as between the federal public or community defender and the panel of private attorneys. If the United States magistrate judge or judge decides to appoint an attorney from the panel, the clerk [federal public or community defender] will determine the name of the next panel member on the list who has handled, or assisted in, a case of equal or greater complexity than the case for which appointment of counsel is required, and who is available for appointment, and will provide the name to the appointing judge or United States magistrate judge.

In the event of an emergency, i.e., weekends, holidays, or other non-working hours of the clerk of court's office, the presiding judge or United States magistrate judge may appoint any attorney from the list. In all cases where

members of the CJA Panel are appointed out of sequence, the appointing judge or United States magistrate judge will notify the clerk of court [federal public or community defender] as to the name of the attorney appointed and the date of the appointment.

**Defender Services Committee Comment:** The “Model Plan” provides for an individual analysis of an attorney’s qualifications with respect to each appointment, to ensure that the attorney selected has the experience and ability required to handle the particular case.

As with the preceding paragraph, discretion is left to individual courts to determine the degree to which, if at all, federal public or community defenders will be involved in the management of the CJA Panel. The federal public or community defender, as indicated in brackets, can be substituted for the clerk of the court.

### III. Compensation – Filing Of Vouchers

Claims for compensation must be submitted, on the appropriate CJA form, to the office of the clerk of the court [federal public or community defender]. The clerk of court [federal public or community defender] will review the claim form for mathematical and technical accuracy, and for conformity with the Guidelines for Administering the CJA and Related Statutes (CJA Guidelines) (Guide to Judiciary Policy, Vol. 7A) and, if correct, will forward the claim form for the consideration and action of the presiding judge or United States magistrate judge.